

**FCC Universal Service Proceeding  
Contribution and Cost Recovery Requirements for CMRS  
Timeline**

- May 1997 – FCC releases *Report and Order* in Universal Service Proceeding, providing that:
  - federal USF contributions for the schools and libraries and rural health care programs will be assessed on both interstate and intrastate end user telecommunications revenues; and
  - telecommunications carriers may recover their federal USF contributions exclusively via their interstate rates.
- December 1997 – FCC releases *Fourth Reconsideration Order* in USF proceeding, recognizing that interstate recovery limitation does “not apply to CMRS providers.” Moreover, “[b]ecause section 332(c)(3) of the Act alters the ‘traditional’ federal-state relationship with respect to CMRS by prohibiting states from regulating rates for intrastate commercial mobile services, allowing recovery through rates on intrastate as well as interstate CMRS services would not encroach on state prerogatives.” Thus, consistent with Section 332(c)(3), “CMRS providers [may] recover their contributions through rates charged for all their services.” The *Fourth Reconsideration Order* has never been reversed either in court or by the FCC.
- October 1998 – FCC releases *MO&O* adopting 15% safe harbor contribution factor for cellular and broadband PCS assessed on “their total cellular and broadband PCS telecommunications revenues.”
- July 1999 – Fifth Circuit releases *Texas Office* decision, holding that the Commission may not assess USF contributions based on intrastate revenues.
  - *Texas Office* decision only involved review of the May 1997 *Report and Order* – not the *Fourth Reconsideration Order*.
  - Carrier cost recovery at issue only with respect to IXCs’ recovery of USF contributions through access charges – purely a *wireline* issue.
- September 1999 -- FCC files a Motion for Stay of the Mandate with the court “until the first day of the quarter subsequent to the quarter following the Court’s final decision.” The rationale for the stay was to allow implementation of the revised mechanism at the beginning of a quarter; thus, by seeking the stay, the FCC was effectively stating its intent to apply the court’s decision prospectively. Court subsequently grants the motion in part, holding that the mandate should issue on November 1, 1999.
- October 1999 – FCC releases *Remand Order* addressing *Texas Office* decision, modifying the contribution formula to exclude intrastate end user telecommunications revenues.
  - *Remand Order* applies the court’s decision prospectively only.
  - *Remand Order* does not address the *Fourth Reconsideration Order*; the only aspect of carrier cost recovery addressed in the *Remand Order* involved ILECs’ ability to recover contributions through interstate access and end user charges.
- December 1999 – BellSouth files Petition for Reconsideration and Clarification of *Remand Order*, asking the FCC to reconsider whether the court’s mandate should have been implemented prospectively only, and to confirm that CMRS providers may recover the costs of federal universal service contributions through their charges for all services.

BellSouth concurrently files a refund request with USAC, contingent on outcome of *Self* litigation.

- December 2002 – In response to growing pressure on the size of the fund and claims that many carriers' USF end-user charges bore little relation to the actual assessment percentage, FCC revises USF contribution methodology by increasing wireless safe harbor to 28.5% and prohibits market of line item charge. FCC clarifies decision in January 2003 Order.
  - FCC did not address BellSouth's petition.
  - Clarified that “[f]or wireless telecommunications providers that avail themselves of the interim safe harbors, the interstate telecommunications portion of the bill would equal the relevant safe harbor percentage times the total amount of telecommunications charges on the bill.” The FCC thus reaffirmed the significance of the *Fourth Reconsideration Order* – carriers using the CMRS safe harbor apply the safe harbor percentage to the total amount of telecommunications charges *irrespective of the customer's actual interstate usage*.
  - FCC action was unrelated to *Texas Office* decision; *Texas Office* is mentioned nowhere in the 2002 Order or the 2003 clarification Order.

***Martha Self v. BellSouth Mobility***  
**Timeline of Litigation and FCC Correspondence**

- September 1998 – Class action lawsuit filed against BellSouth Mobility Inc. in state court alleging that the as FCC had no jurisdiction to assess intrastate service, “it was unlawful and illegal for [defendants] to collect intrastate money for [USF] on intrastate service ....” Subsequently removed to Federal District Court for the Northern District of Alabama.
- March 2000 – *Self* court holds case in abeyance pending FCC action on the BellSouth petition.
- November 2003 – Per the court’s instructions, Cingular requested a status update from the FCC.
- August 12, 2004 – Judge Ott requests status update from Chairman Powell.
- August 20, 2004 – OGC responds to Judge Ott’s inquiry, stating that (1) the issue of CMRS cost recovery is addressed in the 2002 and 2003 orders, and (2) the retroactivity issue would be addressed by end-of-year 2004.
- October 28, 2004 – Plaintiffs file amended complaint at Federal District Court; Cingular files answer November 17, 2004.
- November 15, 2004 – Cingular requests clarification of issues raised in OGC’s August 20, 2004 letter.
- Plaintiff’s counsel files responsive letter December 1, 2004, asserting that *Texas Office* “struck down” the *Fourth Reconsideration Order*, and that the FCC’s 2002 and 2003 Orders support plaintiff’s view of the state of the law.
- December 13, 2004 – OGC responds to Cingular’s November 15, 2004 letter, stating that it “ordinarily does not, by letter, clarify decisions of the Commission, particularly when the matter sought to be clarified is before the agency itself in an ongoing proceeding.”
- January 5, 2005 – Cingular files combined response to plaintiff and OGC as *Ex Parte* Letter.